

Improper Contacts

All persons, including Applicants, Parties of Record, Interested Parties, Ten Taxpayers and/or their agents should be aware that communication with the Commissioner and members of the Public Health Council while a Determination of Need (DoN) application is pending may result in the dismissal of an application or the revocation of the status of a Ten Taxpayer Group. Communication with the Director of the DoN Program and the DoN staff is permitted and encouraged. Please see the relevant sections from the DoN regulation (105 CMR 100.000) below. For more information about improper contacts please call the Program Director at 617-624-5690 or the DPH Legal Office at 617-624-5216.

100.110: Prohibition of Improper Contacts

(A) **Rule When No Application Is Pending.** Prior to the filing of an application, and after final Department action upon an application, verbal and written communications shall be freely permitted with the staff and the Commissioner; provided, however, that in no event is any member of the staff, the Program Director, or the Commissioner authorized to give any indication of what specific action the Council would take upon the merits of any application which may be filed. General advice, however, can be given as to the manner of making application, the procedures to be followed in processing the application, and the nature of standards and criteria applied by the Department in considering applications.

(B) **Communications With Program Director and Staff When Application Is Pending.** Persons and government agencies subject to 105 CMR 100.000 may freely communicate orally or in writing with the Program Director and staff regarding a pending application. No party shall expect that an oral communication will be incorporated or reflected in the staff summary or that the oral communication will form the basis of the staff recommendation. Parties are encouraged to submit all communications in writing pursuant to 105 CMR 100.000.

(C) **Communications with Commissioner and Public Health Council When Application Is Pending.** Except as provided in 105 CMR 100.110, during such time as an application for determination of need is before the Department, neither the applicant nor any party of record nor any employee or agent of such applicant or party nor any other interested person shall initiate any oral or written communication with the Commissioner, or any member of the Council concerning an application. Applicants or other parties shall be permitted to make written inquiry from the Commissioner and written or verbal inquiry from the staff concerning the status or progress of an application.

(D) **Sanction for Improper Communication.** Notice is hereby given that, if an applicant or ten taxpayer group, either directly or through an employee or agent, makes a communication which is prohibited under 105 CMR 100.110 or which is otherwise clearly improper, or fails to send copies of communications or written materials, as required by 105 CMR 100.100, the Department may dismiss its application under 105 CMR 100.531, or revoke its status as ten taxpayer group under 105 CMR 100.140(D).

100.531: Dismissal Without Determination of Need

(A) The Council upon consideration of an application on its agenda, may upon motion duly made, seconded, and voted, dismiss the application without making a determination of need. Dismissal shall be considered final Departmental action.

(B) An application may be dismissed on any one of the following grounds:

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(3) the applicant has made an improper communication to the Commissioner, the Program Director, or any member of the staff or the Council (see 105 CMR 100.110), has failed to send copies of a communication or written materials to all parties of record (see 105 CMR 100.100), or has sought to exert undue influence on any such person or upon a member or employee of the Executive Office of Health and Human Services;